

### **REMARKS**

The Examiner rejects claims 1-8 in the subject application. Applicant amends claims 1 and 7 and cancels claim 8 in this Response. Claims 1-7 (2 independent claim; 7 total claims) remain pending in the application.

Support for the various amendments may be found in the originally filed specification, claims, and figures. For example, support for the amendment to claims 1 and 7 can be found at page 13 (line 21) to page 14 (line 3) of the application as filed (or paragraphs [0059] and [0060] of the application as published). No new matter has been introduced by these amendments. Reconsideration of this application is respectfully requested.

### **35 U.S.C. § 102 REJECTIONS**

The Examiner rejects claims 1-8 under 35 U.S.C. §102(e) as allegedly being anticipated by Hunter (U.S. Patent No. 6,647,417, issued November 11, 2003, assignee is World Theatre, Inc.). Applicant respectfully traverses the rejection.

As provided in MPEP §2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."<sup>1</sup> Or stated another way, "The identical invention must be shown in as complete detail as is contained in the ... claim".<sup>2</sup>

#### **Hunter Reference**

Hunter discloses a music distribution system, where customers can pre-select music selections and the music selections are blanket transmitted (preferably via direct broadcast satellite) in an encoded format directly to each customer's receiving dish or antenna (which is linked to the customer's user station). The user station may store the received music content on a suitable intermediate storage medium such as a disk drive.<sup>3</sup>

Furthermore, Hunter discloses a method for ensuring a final good quality copy of the downloaded music using checksums and multiple downloads of the same copy. In this method, Hunter discloses a system that has the capability to detect bit losses and

<sup>1</sup> Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>2</sup> Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

receive a second copy of the selected music and use all or part of the second copy to patch the missing or corrupted bits or packets in the original download. This method requires storing the requested download on the storage medium, checking for missing data, informing the customer that the download was imperfect, then receiving and storing all or part of a second transmission, and then selecting good packets of bits to make up the final copy.<sup>4</sup>

Specifically, after downloading the first copy, the system disclosed by Hunter only requests a second copy of the music selected if the first copy is imperfect or of poor quality. The Hunter system will not request a second copy if the first copy is of good quality (e.g., quality A) even when the system is capable of receiving a second copy.

#### **Failings of Hunter Reference**

As recited in pending claim 1, the synthesis section outputs the first data unit as a first output data unit when the communication section cannot receive the second data unit in accordance with the communication condition. However, when the communication section can receive the second data unit in accordance with the communication condition, the synthesis section synthesizes the first data unit and the second data unit so as to generate a synthesis data unit and outputting the synthesis data unit as a second output data unit.

Hunter does not disclose a synthesis section as recited in pending claim 1. Specifically, Hunter discloses a system where the decision of whether to output the first copy or a second (better quality) copy is not dependent on whether the system can receive the second copy. The decision of whether to output a second (better quality) copy is dependent upon whether the original copy is of acceptable quality. Specifically, if the reception is good and the original copy is of good quality (e.g., quality A), the system as disclosed by Hunter will not download a second copy after it downloaded the first copy even if the system is capable of receiving a second copy. Accordingly, in Hunter, even when the system can receive the second copy in accordance with the communication condition after it downloaded the first copy, the system does not download the second copy so as to synthesize the first copy and the second copy.

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<sup>3</sup> Hunter, column 3, lines 40-53.

<sup>4</sup> Hunter, column 15, lines 6-24.

Additionally, the Examiner asserts that for a situation whereby the user of Hunter's system requests a song in the morning when the weather is not favorable for a good transmission, the system records the song to the system and notifies the user of the poor quality.<sup>5</sup> As such, since the system as disclosed by Hunter can receive the song in the morning, the system will also be capable of receiving the second transmission in the morning too. However, the system as disclosed by Hunter does not receive the second transmission even "when the communication section can receive the second data unit..." This is because as discussed previously, in Hunter, the decision of whether to output the first copy or a second (better quality) copy is not dependent on whether the system can receive the second copy. The decision of whether to output a second (better quality) copy is dependent upon whether the original copy is of acceptable quality.

Thus, Hunter fails to teach, advise, or suggest "a synthesis section for, when the communication section cannot receive the second data unit in accordance with the communication condition, outputting the first data unit as a first output data unit, and when the communication section can receive the second data unit in accordance with the communication condition, synthesizing the first data unit and the second data unit so as to generate a synthesis data unit and outputting the synthesis data unit as a second output data unit" as recited in claims 1 and 7 (and claims 2-6, which depend from claim 1).

The present invention addresses an exemplary problem associated with a music delivery service using the Internet or the like,<sup>6</sup> such problem as the system in Hunter. Specifically, the problem includes not being able to reproduce the data until the data is completely downloaded and when the receiving state is deteriorated, noise or gap is generated, and as a result, the sound quality is lowered.

The present invention has exemplary advantages of providing a reproduction apparatus for providing at least a prescribed level of sound quality even when a reception state is deteriorated and increasing the total reproduction time of the acoustic data recorded on a recording medium having a limited capacity.<sup>7</sup>

<sup>5</sup> Office Action mailed September 19, 2005, pages 2 and 3.

<sup>6</sup> Subject Application, page 2, lines 18-33.

<sup>7</sup> Subject Application, page 5 lines 26-33.

Therefore, Hunter does not teach or suggest the present invention as disclosed in claims 1 and 7 (and claims 2-6, which depend from claim 1), and the rejections of claims 1-7 should be withdrawn without amendments.

The Examiner states that claim 8 is disclosed, because it is inherent that the downloaded and stored song (first data unit) and the replacement packets (second data unit) would have to originate from the same song stored at the remote location; otherwise, the songs would not playback correctly after repair.<sup>8</sup> Although claim 8 has been canceled, claims 1 and 7 have been amended to incorporate a limitation of claim 8. The Examiner's inherency argument is flawed. First, replacement packets do not have to originate from the same remote locations, since it is not disclosed by Hunter. Second, even if they were from the same remote locations, the Examiner fails to state any disclosure in Hunter that teaches or suggests "common hierarchy-encoded data unit". Thus, the Examiner's anticipation rejection based on "the first data unit and the second data unit originates from a common hierarchy-encoded data unit" as recited in amended claims 1 and 7 is improper.

An exemplary advantage associated with a data unit with such a hierarchy-encoded data structure is that the sound quality of the reproduction of a data unit obtained by decoding the hierarchy data unit of hierarchy level 1 is lower than the reproduction of a synthesis data unit, which is obtained by decoding the hierarchy data unit of hierarchy level 1 and at least one of the hierarchy data units of hierarchy levels 2 through K and synthesizing the decoded hierarchy data units.<sup>9</sup> Therefore, the resulting synthesized data unit has a higher sound quality.

Therefore, Hunter fails to teach or suggest the missing claim elements as recited in amended claims 1 and 7, so that the rejection of claims 1 and 7 should be withdrawn. Thus, Hunter fails to teach, advise, or suggest one or more of the claimed elements, so that claims 1-7 are patentable over Hunter.

<sup>8</sup> Office Action mailed September 19, 2005, page 11.

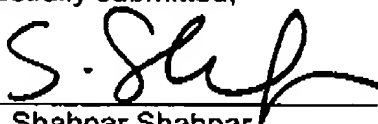
<sup>9</sup> Subject Application, page 13, line 21 to page 14, line 3.

**CONCLUSION**

Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application is thus requested. Applicant invites the Office to telephone the undersigned if he or she has any questions whatsoever regarding this Response or the present application in general.

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Respectfully submitted,

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